

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:06CV54-01-MU

MAURICE BYRD,)
)
Plaintiff,)
)
v.)
)
STATE OF NORTH CAROLINA, et al.,)
)
Defendants.)
_____)

ORDER

THIS MATTER is before the Court upon Plaintiff's Motion for Reconsideration, filed April 6, 2006.

On February 9, 2006, Plaintiff filed a Complaint on a 42 U.S.C. § 1983 form asserting that the North Carolina Court of Appeals had abused its discretion by dismissing his state court criminal case without comment after he had "colorably challenged the validity of his conviction." Plaintiff asked this Court to construe his § 1983 Complaint as a habeas corpus action and order his state conviction vacated and remanded to the state trial court for re-sentencing.

This Court dismissed Plaintiff's Complaint because he was seeking to overturn his state court conviction or sentence and therefore his claim was most properly brought as a habeas claim rather than a § 1983 claim and this was not the proper district for him to file a § 2254 claim. The Court informed Plaintiff that pursuant to the provisions of Section 2241(d) of Title 28 of the United States Code, and in accordance with a joint order of the United States District Courts for the Eastern, Middle, and Western Districts of North Carolina, his habeas action should be filed in the United

States District Court for the Eastern District of North Carolina, the district within which the state court was held which convicted and sentenced Plaintiff.

Plaintiff has filed the instant motion to reconsider asserting that this Court erred in construing his Complaint as a § 2241 petition. A review of this Court's Order reveals that this Court did not construe Plaintiff's Complaint as a § 2241 petition. Rather this Court informed Plaintiff that proper venue for his § 2254 petition would be the United States District Courts for the Eastern District of North Carolina which is the district within which the state court was held which convicted and sentenced Plaintiff.

THEREFORE IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration is **DENIED**.

Signed: April 10, 2006

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

